

Second Regular Session
Seventy-third General Assembly
STATE OF COLORADO

DRAFT
9.29.21

Bill 7

LLS NO. 22-0185.01 Jennifer Berman x3286

INTERIM COMMITTEE BILL

Water Resources Review Committee

BILL TOPIC: "Ag Water Rights Deed Affidavit No Inv Speculation"

A BILL FOR AN ACT

101 **CONCERNING A REQUIREMENT THAT A PURCHASER OF AGRICULTURAL**
102 **WATER RIGHTS WHO RECORDS THE INSTRUMENT THROUGH**
103 **WHICH THE WATER RIGHTS WERE CONVEYED WITH THE COUNTY**
104 **CLERK AND RECORDER EXECUTE AN AFFIDAVIT STATING THAT**
105 **THE PURCHASER IS NOT ENGAGING IN INVESTMENT WATER**
106 **SPECULATION WITH REGARD TO THE WATER RIGHTS**
107 **PURCHASED.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov/>.)

*Capital letters or bold & italic numbers indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.*

Water Resources Review Committee. The bill requires that any purchaser of agricultural water rights who records the deed or other instrument that conveys the water rights with the county clerk and recorder also execute an affidavit stating that the purchaser is not engaging in investment water speculation with regard to the agricultural water rights purchased. Investment water speculation is the purchase of agricultural water rights in the state with the intent, at the time of purchase, to profit from an increase in the water's value in a subsequent transaction or by receiving payment from another person for nonuse of all or a portion of the water subject to the water right.

The state engineer or the state engineer's designee (state engineer) may investigate complaints regarding the veracity of an affidavit. If the state engineer determines that a purchaser engaged in investment water speculation with regard to the agricultural water rights at issue, the state engineer's determination is admissible in a court of competent jurisdiction as evidence that the purchaser committed perjury in executing the affidavit.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. In Colorado Revised Statutes, **add** 38-35-128 as follows:

38-35-128. Affidavit required to accompany an instrument conveying agricultural water rights - investigation of veracity of affidavit - definitions - rules. (1) A PERSON THAT RECORDS WITH THE COUNTY CLERK AND RECORDER A DEED OR OTHER INSTRUMENT THAT CONVEYS AGRICULTURAL WATER RIGHTS SHALL, AT THE TIME OF FILING THE DEED OR OTHER INSTRUMENT, FILE WITH THE COUNTY CLERK AND RECORDER AN AFFIDAVIT, EXECUTED UNDER PENALTY OF PERJURY, STATING THAT THE PURCHASER IS NOT ENGAGING IN INVESTMENT WATER SPECULATION WITH RESPECT TO THE AGRICULTURAL WATER RIGHTS PURCHASED. THE AFFIDAVIT SHALL BE EXECUTED BY THE PURCHASER OR, IF THE PURCHASER IS AN ENTITY, BY AN INDIVIDUAL THAT REPRESENTS THE INTERESTS OF THE PURCHASER.

1 (2) AN AFFIDAVIT FILED PURSUANT TO THIS SECTION MUST:

2 (a) STATE THAT THE AFFIANT HAS ACTUAL KNOWLEDGE OF, AND
3 IS COMPETENT TO TESTIFY IN COURT ABOUT, THE FACTS IN THE AFFIDAVIT;
4 AND

5 (b) INCLUDE INFORMATION ABOUT THE PURCHASER'S INTENDED
6 USE OF THE WATER THAT IS SUBJECT TO THE WATER RIGHTS PURCHASED,
7 INCLUDING A STATEMENT EXPLAINING THE PURCHASER'S REASON FOR
8 MAKING THE PURCHASE.

9 (3) (a) UPON A THIRD-PARTY COMPLAINT OR UPON THE STATE
10 ENGINEER'S OWN MOTION, THE STATE ENGINEER MAY INVESTIGATE THE
11 VERACITY OF AN AFFIDAVIT FILED PURSUANT TO THIS SECTION TO
12 DETERMINE IF THE PURCHASER HAS ENGAGED IN INVESTMENT WATER
13 SPECULATION WITH REGARD TO THE AGRICULTURAL WATER RIGHTS
14 CONVEYED TO THE PURCHASER. IF THE STATE ENGINEER DECIDES TO
15 INVESTIGATE AN ALLEGED VIOLATION, THE STATE ENGINEER SHALL NOTIFY
16 THE PURCHASER OF THE INVESTIGATION. THE STATE ENGINEER MAY
17 PROMULGATE RULES TO IMPLEMENT THIS SECTION.

18 (b) IN INVESTIGATING AN ALLEGATION OF INVESTMENT WATER
19 SPECULATION, THE STATE ENGINEER MAY SEEK TO INSPECT ANY
20 DOCUMENT, INCLUDING AN ELECTRONIC DOCUMENT, THAT THE STATE
21 ENGINEER BELIEVES IS RELEVANT TO A DETERMINATION AS TO WHETHER
22 A SALE OR TRANSFER OF AGRICULTURAL WATER RIGHTS IS INVESTMENT
23 WATER SPECULATION. THE STATE ENGINEER SHALL SAFEGUARD ANY
24 TRADE SECRETS, PRIVILEGED INFORMATION, AND CONFIDENTIAL
25 COMMERCIAL OR FINANCIAL INFORMATION VIEWED OR RECEIVED IN
26 RESPONSE TO A REQUEST TO INSPECT A DOCUMENT, AND THE STATE
27 ENGINEER SHALL NOT ALLOW A THIRD PARTY TO INSPECT ANY SUCH

1 DOCUMENT PURSUANT TO THE "COLORADO OPEN RECORDS ACT", PART 2
2 OF ARTICLE 72 OF TITLE 24.

3 (4) THE STATE ENGINEER SHALL MAKE A WRITTEN DETERMINATION
4 AS TO WHETHER THE PURCHASER HAS ENGAGED IN INVESTMENT WATER
5 SPECULATION WITHIN THIRTY-FIVE DAYS AFTER THE COMPLAINT IS FILED
6 OR WITHIN THIRTY-FIVE DAYS AFTER THE STATE ENGINEER, ON THE STATE
7 ENGINEER'S OWN MOTION, DECIDES TO MAKE AN INVESTIGATION UNDER
8 THIS SECTION, AND THE STATE ENGINEER SHALL SEND A COPY OF THE
9 DETERMINATION TO THE COMPLAINANT, THE PURCHASER, AND THE
10 COUNTY CLERK AND RECORDER IN WHOSE OFFICE THE DEED OR OTHER
11 INSTRUMENT CONVEYING AGRICULTURAL WATER RIGHTS AND THE
12 ACCOMPANYING AFFIDAVIT WERE RECORDED. IF THE STATE ENGINEER
13 FAILS TO MAKE A DETERMINATION WITHIN THIRTY-FIVE DAYS, THE
14 COMPLAINT IS DEEMED DISMISSED WITHOUT PREJUDICE.

15 (5) IF THE STATE ENGINEER DETERMINES THAT A PURCHASER HAS
16 ENGAGED IN INVESTMENT WATER SPECULATION, THE STATE ENGINEER'S
17 WRITTEN DETERMINATION ON THE MATTER IS ADMISSIBLE IN A COURT OF
18 COMPETENT JURISDICTION AS EVIDENCE THAT THE PURCHASER
19 COMMITTED PERJURY IN EXECUTING THE AFFIDAVIT.

20 (6) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE
21 REQUIRES:

22 (a) "AGRICULTURAL WATER RIGHT" MEANS THE BENEFICIAL USE
23 OF WATER FOR AGRICULTURAL PURPOSES IN ACCORDANCE WITH A WATER
24 RIGHT.

25 (b) (I) "INVESTMENT WATER SPECULATION" MEANS THE PURCHASE
26 OF AGRICULTURAL WATER RIGHTS IN THE STATE WITH THE INTENT, AT THE
27 TIME OF PURCHASE, TO PROFIT FROM AN INCREASE IN THE WATER'S VALUE

1 IN A SUBSEQUENT TRANSACTION, SUCH AS A SALE OR LEASE OF THE
2 WATER, OR BY RECEIVING PAYMENT FROM ANOTHER PERSON FOR NONUSE
3 OF ALL OR A PORTION OF THE WATER SUBJECT TO THE WATER RIGHT;
4 EXCEPT THAT PAYMENT FOR NONUSE OF A WATER RIGHT IS NOT
5 INVESTMENT WATER SPECULATION IF IT IS DONE AS PART OF:

6 (A) A STATE OR LOCAL GOVERNMENT'S, MUNICIPAL WATER
7 PROVIDER'S, WATER CONSERVANCY DISTRICT'S, WATER CONSERVATION
8 DISTRICT'S, OR NONPROFIT ORGANIZATION'S ESTABLISHED WATER
9 CONSERVATION PROGRAM; OR

10 (B) THE COLORADO WATER CONSERVATION BOARD'S INSTREAM
11 FLOW PROGRAM.

12 (II) "INVESTMENT WATER SPECULATION" DOES NOT INCLUDE
13 PURCHASES OF AGRICULTURAL WATER RIGHTS BY THE FOLLOWING
14 PURCHASERS:

15 (A) A MUNICIPALITY OR OTHER WATER PROVIDER THAT PROVIDES
16 DRINKING WATER TO CUSTOMERS LOCATED WITHIN ITS SERVICE AREA;

17 (B) A WATER CONSERVANCY DISTRICT OR WATER CONSERVATION
18 DISTRICT;

19 (C) THE COLORADO WATER CONSERVATION BOARD OR ANY OTHER
20 STATE ENTITY; OR

21 (D) A GOVERNMENTAL OR QUASI-GOVERNMENTAL AGENCY OR
22 NONPROFIT ORGANIZATION THAT PURCHASES AGRICULTURAL WATER
23 RIGHTS PRIMARILY FOR A PUBLIC PURPOSE SUCH AS CONSERVATION OR
24 COMPACT COMPLIANCE.

25 (c) "PURCHASER" MEANS:

26 (I) A PERSON THAT HAS PURCHASED AGRICULTURAL WATER
27 RIGHTS IN THE STATE; OR

1 (II) A PERSON FOR WHOM ANOTHER PERSON ACTS AS AGENT IN
2 NEGOTIATING THE PURCHASE OF AGRICULTURAL WATER RIGHTS IN THE
3 STATE.

4 (d) "STATE ENGINEER" MEANS THE STATE ENGINEER APPOINTED
5 PURSUANT TO SECTION 37-80-101 OR THE STATE ENGINEER'S DESIGNEE.

6 (e) "WATER RIGHT" HAS THE MEANING SET FORTH IN SECTION
7 37-92-103 (12).

8 **SECTION 2. Act subject to petition - effective date -**
9 **applicability.** (1) This act takes effect at 12:01 a.m. on the day following
10 the expiration of the ninety-day period after final adjournment of the
11 general assembly; except that, if a referendum petition is filed pursuant
12 to section 1 (3) of article V of the state constitution against this act or an
13 item, section, or part of this act within such period, then the act, item,
14 section, or part will not take effect unless approved by the people at the
15 general election to be held in November 2022 and, in such case, will take
16 effect on the date of the official declaration of the vote thereon by the
17 governor.

18 (2) This act applies to agricultural water rights deeds or other
19 instruments of conveyance recorded on or after the applicable effective
20 date of this act.